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EMERGING LEGAL ISSUES IN CONTEMPORARY SPORTS- Somkeerti Vardhan Singhdeo¹**Abstract**

The industry of sports has always been a prodigious sector across the world bringing together entertainment, games, culture and pecuniary business, right from the barbaric era through the glorious days of Caesar to the twenty first century money making sports industry. Sporting games have always been encouraged by chieftain, governments, private individuals and entities interested not only in the games themselves but more in the financial business quotient that sports entail. Sports which, for a very prolonged time, was considered an activity which was recreational, has nowadays become a thorough materialistic activity effectuating elephantine profits.

Earlier the sporting events were based on the competition between different talents, but now money has procured a gigantic role in all these events. Corporatization of sports has become gargantuan. Enormous importance has been gained by different marketing aptitudes like franchising or brand building of a sport or a player, overtaking other important components of a game.

These distinct aptitudes like merchandising, franchising and branding are the major contributors of revenues etc. which includes exploitation of different intellectual property rights of sports clubs. With gradual proliferation in the business angle of sports, dormant Intellectual Property Rights (IPRs) vesting in almost every facet of the sports industry are being tapped into and capitalized.

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Branding of sporting games and connected events, teams, sports clubs, celebrity status etc. can all be made feasible through the constructive assets i.e. IPRs which act as a marketing tool to make all of it possible.

Keywords: Sports, Intellectual Property right, Corporatization

INTRODUCTION

The term sport can trigger different emotions in different people. For few it is passion for others it is recreation, for some others it is nostalgia. Irrespective of feelings it is something that can bring people together, it can rekindle collective spirit and at times it teaches life lessons too. Everything is fine when it is played as per rules and in the right spirit. But berserk consequences are bound to follow if the rules or spirit, or both are not respected and followed. Be it at the street level or at the international level, undermining the spirit of the sport by any means direct, indirect or otherwise conflicts are bound to arise.

We have travelled a long way in both understanding and expecting the role of the sport regulator in ensuring the integrity of the sport in the past few decades. It is important to understand that questions were raised by individuals, associations, apart from sports persons in general on the conduct of the sport regulators in upholding the integrity of the sport. Over a period of time, we have witnessed a tremendous growth of literature on sport disputes, be it decisions of domestic regulators, tribunals, courts or even legislations and policies by the states.

No amount of substantiation will be enough to disprove the role of the sport regulator in making the sport better. Needless to say, the failure of the sport regulator, be at the grassroots level or at the top level, or shortcomings of the sport regulator in discharging its functions, or emergence of corruption of various sorts and at levels, ensuring coordination with provincial bodies, following the mandate of the international sport

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federation, etc. result in widespread cacophony within the sport ecosystem wherein the players are the first ones to suffer.

- **The journey to selection:**

Selection of a player to represent the nation is a coveted achievement in the career of any player. The popularity surrounding the appearance at the international level and the performance is just the tip of the iceberg of the players lives. To reach a position where they can stand a chance to be selected to the national team, a long arduous journey is the obvious route. The time and the efforts put in the player as part of the journey comprises of many challenges both at the personal and professional levels. Irrespective of the outcome of the competition/ event of the current year, one should always look at the next event. Being in the competition circuit is a bare minimum requirement. It is equally applicable to the individual sports and team sports. The challenges at the personal level include, but not limited to, skill, financial capacity, health (both physical and mental), drive and motivation. The player while focusing on the continued development of skill by both rectifying mistakes and adding new techniques has a serious task of maintaining fitness, conquering age-imposed limitations, and sport induced injuries² all through the while without resorting to consumption of prohibited substances³. The enormity of the task is further complicated by the factors of finance. The player is expected

- to have the sports gear/ equipment which is up to the mark;
- to travel for competitions;
- to pay necessary entry fee, wherever required;
- to afford the diet;

These factors of finances are to be considered in addition to the livelihood and lifestyle of the player and family that sport the player. It is common to see players taking up

² Sidharth Monga, R Ashwin: 'I've always been good at assessing batsmen, but now I think I've taken it to another level', Interview in Cricket Monthly (December 2021)

³ The practice of Doping which is prohibited and the athlete faces penalties under the WADA (World Anti-Doping Agency) Anti-doping Code administered through the national doping agencies.

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jobs in sports quota for the sake of financial security. But the jobs are not readily available for players at all levels. It is a difficult task to make the ends meet in many cases. When considered in light of the fact that some players' families move to a city or sub-urban location to make the training and coaching accessible for the player by leaving behind whatever little comfort they have at their hometowns, it shows the amount of financial and psychological pressures that a player has to endure till he/she achieves some success that is lucrative. When we consider the position of female players, a variety of factors get added. On the periphery, family pressures, marital issues, and maternal considerations can be significant. But the existence of predators and sexual harassment in the system make it a thorny ride for female players.

On the professional side, the player has to stay relevant, which demands a performance that is commendable and for that the player has

- to compete with ever-increasing number of contenders for the spot in the nationals;
- has to seek professional advice, wherever available, to better himself and this will not be free in all cases;
- to train and maintain fitness in off-season and
- to strive achieving required level of fitness during recovery and rehabilitation after an injury.

This is just a bare template of the journey; there can be many other factors that can influence the player's life till the selection. One such factor can be visibility and recognition of the player. One may be highly talented, but when that talent is not tapped due to various reasons like location of the player, the player may lose some valuable years before his talent is spotted by a scout or recognized by media or social media to bring him into limelight.

As mentioned earlier, participating at the international level and being popular is a separate story. But the story before that has to be appreciated and the journey should not be rendered useless by making the selection unfair or arbitrary. There are many ways in which the selection process can torment the lives of the players. One simple illustration can be lack of

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information on the selection process followed by the concerned sport regulatory body. If the players do not know the methods of selection, they cannot be prepared to compete. When the barriers like location, language, wealth and socially differentiating factors are coupled with the withholding of information relating to selection process, there emerge serious questions of law. If the selection process is made known only to the academies run of the people in contact with the members of the sport regulatory body in exclusion of others, we can witness blatant misuse of power. Similarly, when the process is indicated to all but arranged in a manner where exclusion can happen on the basis of location, like every year the process takes place in the same region of the country and making it difficult to players of other regions to participate by virtue of travel, or fatigue and exhaustion associated with travel.

- **Fairness and Selection:**

The element of fairness in relation selection can be seen in different layers. The insistence of selection instead of someone powerful to decide on who should represent the nation is the first indicator of fairness. The existence of selection as a method is one and the method is being is another. The next layer of fairness can be gauged from the information available to the interested, i.e., players. If the NSF can make it clear that the selection will be done by a committee, trials or the detailing the process of selection, then it can create information parity among players coming from different backgrounds. Another layer of fairness lies in the information relating to the criteria⁴. The players should be made known about the expectations of the NSF or the Committee, wherever possible⁵. If the players do not know which event, performance or competition will be considered for selection then there is an information vacuum which makes the planning difficult. One more layer of fairness lies in the decision making of the committee

⁴ Naresh Kumar Sharma cases of 2021

⁵ Naresh Kumar Sharma cases of 2018

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or the NSF⁶. It is not just limited to the rationale adopted, but the time turns out to be a vital factor.

Another interesting aspect relating to fairness in selection arises from the fact that there are team sports. We understand that a player may be talented, but he/she cannot make a cut to the team due to the lack of slot/space. To illustrate in cricket language, a player may be better batsman, but the team needs bowlers also. So, the selection committee may consider a good bowler instead of a better batsman as the saying goes one cannot play with 11 people who can only bat, the team need bowlers too. So, the decision of the committee is dependent more of the requirements and demands of the game than the skill of the player alone. Similarly, the decision to have defenders more than the riders in the squad for an upcoming kabaddi tournament perse will not make the committee unfair. The Supreme Court of New South Wales observed that the fairness to individual athlete (need not) predominate. It may take inferior place to the need of the team⁷.

- **Disputes relating to Fairness:**

Each layer indicated above can be a fertile ground for disputes. There can be questions concerning

- the nonexistence of selection process;
- lack of information about/ clarity in the process;
- body or committee looking after the process;
- criteria considered for selection;
- exclusion of a player;
- exceptions created or considered;
- opportunities given;

⁶ Karamjyoti Case

⁷ Sheehy v Judo Federation of Australia (1995). This unreported decision was found in David Thorpe et al., Sports Law, 3rd Ed (rep.), 2018, Oxford University Press, p. 693.

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Need of Selection Process:

Though the NSF is tasked with the promotion, development and regulation of the sporting the country, it can never be said that the NSF can arbitrarily decide who should represent the country. In an arena where there are numerous candidates are competing to represent the nation, common sense and national interest demand that the best of the available be permitted represent. The determination of best can be on the basis of competition among the contenders, like a trial. If trials are not possible due to the nature of the sport or the time frame involved, then what can be considered as best can only be done by persons who understand the activity or at least been a part of such activity. Simply put, there has to be some system in place to determine the best to represent the country.

- **Information regarding Selection Process:**

For a selection to be fair, the participation of all the contenders is essential. It is pertinent to note that the regulator should publicize the information relating to the process. It can never be a namesake process. Lack of information to players is one and the withholding of information by the concerned body is another. Of course, the players are expected to keep track of information using the possible means; that does not mean that the concerned body is not cast upon on an obligation to take necessary steps to circulate the information. The players have a right to know about the process. If there is an exclusion of one or more players by dubious means to support or make for another player is patently unfair.

- **Entity to look into the Selection Process:**

As mentioned earlier, the NSF cannot arbitrarily determine the persons to represent the nation. There is a duty cast upon the NSF to ensure that the best interests of the sport prevail in its actions. This in turn creates an additional obligation to filter the competing talents to suit the ultimate goal. Generally, the NSFs will constitute a committee

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of experts to determine the appropriate the contenders. The committee can comprise of some the current members of NSF, former players or a combination thereof. The decision on who can be the best in the given set of circumstances in the given sport can only be determined fairly if the constituents of the committee understand the sport and its requirements. The composition of the committee can be questioned on various grounds. If a member or members of the committee never played the sport or has concern with the sport discipline under consideration, then it raises seriously questions on the fairness in the process. If a member is related or has nexus with a contender, then there exists a need of safeguards to avoid bias¹⁰.

1.3 TECHNOLOGY IN SPORT

For some sports, the importance of technology is perfectly obvious. Take Formula 1 motor racing, for example. It's seen by some as more of a technological and engineering arms race than sporting contest.

Elsewhere, the unstoppable march of tech is perhaps less obvious. But it's no less profound. Wear a device that measures your every movement. Use virtual reality to help you see the game more clearly – as a spectator or player. Use augmented reality to view data and analysis in real time superimposed on the field of play and in your normal field of vision. Build a golf club that meets your every ball flight, forgiveness and power need while also providing feedback on your ball striking in real time or to analyze later. Or smash through the two-hour barrier for the marathon wearing running shoes developed in a lab that give you that all important extra pep in your step.

With technology improving all the time, the growth of the business of sports tech looks assured. The full report looks into four areas of sports tech in more detail:

- Wearable devices
- Virtual Reality
- Augmented Reality
- Custom sporting equipment

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All four are interesting for what's already going on within them but also for the potential for future growth and development.

The report says that that taken as a whole, the sports tech market is well placed to benefit from societies and economies that increasingly put data at their heart. And a post-pandemic focus on health, wellness and playing sport provides added impetus.

SPORTS AND SOCIAL MEDIA: PRIVACY, DEFAMATION, AND OTHER LEGAL CONSIDERATIONS

Social media has become a pervasive presence in our lives, and it is no different in the world of sports. Athletes, coaches, and teams use social media to connect with fans, promote their brand, and share their opinions. However, the use of social media in sports can also lead to legal issues, including privacy concerns, defamation claims, and other potential liabilities.

Privacy Concerns

The use of social media can raise a host of privacy concerns for athletes, coaches, and teams. For instance, athletes may accidentally reveal personal information, such as their home address or phone number, in a social media post. Teams may also accidentally leak sensitive information, such as player injuries or locker room discussions.

To mitigate these privacy concerns, it's important to educate athletes and teams on the risks of social media use and to establish clear guidelines for what can and cannot be shared on social media. Additionally, it's crucial to have a plan in place for handling data breaches and other privacy incidents.

Defamation Claims

Social media also creates opportunities for athletes, coaches, and teams to defame others. For instance, an athlete might post a tweet accusing another player of cheating or using performance-enhancing drugs, without any evidence to back up their claim. This can lead to a defamation claim by the accused player, who may suffer damage to their reputation as a result of the false accusation.

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To avoid defamation claims, athletes, coaches, and teams should be careful about what they post on social media. Before making any accusations or sharing any potentially damaging information, it's important to have solid evidence to support the claim. Additionally, it's important to be aware of the potential consequences of social media use, as defamation claims can be costly and damaging to one's reputation.

Other Legal Considerations

In addition to privacy and defamation concerns, there are other legal considerations that athletes, coaches, and teams need to be aware of when using social media. For example, social media posts can potentially violate intellectual property laws if they use copyrighted material without permission. Social media use can also raise issues related to advertising and endorsement deals, particularly if athletes are promoting products or services without disclosing that they are being paid to do so.

To ensure that social media use complies with all relevant laws and regulations, athletes, coaches, and teams should consult with legal professionals who are familiar with the unique legal issues surrounding social media in sports. They can provide guidance on how to avoid legal pitfalls and protect themselves from liability.

Social media has become an integral part of the sports world, but it also presents a range of legal challenges. Privacy concerns, defamation claims, and other legal considerations are all important issues that athletes, coaches, and teams need to be aware of when using social media. By being proactive and taking steps to protect themselves, they can avoid potential legal problems and continue to benefit from the many advantages that social media has to offer.

ANTI-DOPING REGULATIONS

Since the 1960s, concern over doping in sport has increased due to a series of doping incidents culminating with the revelation of systematic doping in relation to cycling's most prestigious event, Tour de France, in 1998. Much to the regret of the International Olympic Committee (IOC), the tarnished reputation of elite sport led to consensus among politicians responsible for sport that the doping problem was not efficiently dealt with by various local

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or international sports federations⁸. The ways which the media had critically dissected the outcomes of medicalized sport through the 1980s and 1990s led to anxiety within sports organizations about their power and control over the situation⁹. In order to restore and protect the image and integrity of sport, the IOC in 1999 organized the first World Conference on Doping in Sport. This convention led to the establishment of the World Anti-Doping Agency (WADA). However, the IOC did not succeed in its attempt to take full control over this new governing body. At the convention, the IOC was forced to accept that representatives from governments around the world would be involved in the new global organizational structure. The speed with which WADA was established was a clear indication of the perceived urgency of the matter. The apparently widespread doping in professional cycling had the potential to cause a general decline in the spectators' and sponsors' sports interest. Thus, it was time to fend off this alleged threat to sports often-celebrated values: health; fair play; and sportsmanship.

Since WADA was founded, a range of doping cases and anti-doping initiatives have led to some unfortunate consequences and the aim of this article is to expose this pattern to demonstrate that anti-doping has gone too far and now poses more of a threat to (the spirit of) elite sport than the problem WADA was formed to resolve. By doing so, our motivation is not to advocate termination of the anti-doping rules altogether. It would be irresponsible to allow athletes unregulated access to performance-enhancing drugs. Doping is part and parcel of what sports leaders must regulate if sport is not to develop into a competition of who dares to take the highest risk. This, however, does not mean that the end justifies the means. It is crucial that anti-doping regulations are sensible and that anti-doping work is carried out responsibly and humanely. If, as today, the problem is approached overzealously, arbitrarily sometimes even irrationally, it becomes counter-productive. At present, the anti-doping campaign has a healthy level of public support but the more controversial aspects and decisions are not widely discussed.

⁸ Caple, J., 2012. *With Contador, cycling loses yet again*

⁹ CAS, 2006. *CAS 2005/A/884 Tyler Hamilton v/USADA & UCI.*

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We will argue that sport is essentially deteriorating under the current anti-doping campaign executed by an un-coordinated alliance between the WADA, law enforcement authorities, sports organizers and the media. We will develop our argument in three steps. We begin with a brief consideration of the fundamental characteristics that define the kind of sport WADA was established to protect. After this, we use the case of cycling to demonstrate the unplanned consequences of the current sanction system and show how it diminishes the meaning of sport before we finish the article by calling for a more rational and level-headed approach which is urgently needed to bring sport out of its current mess.

The main characteristics of sport

The suggestion that anti-doping is about to bring professional sport to an end may seem far-fetched. To avoid misunderstanding, the idea is not that the sport industry is about to fold. There is little doubt that sport as a business will continue. English Premier League football will be played, cycling's grand Tours will be raced, the Olympic Games will take place as will an ever-growing number of sports competitions for a long time to come. What we argue is that the fundamental attraction and essence of competitive elite sport is being undermined by the anti-doping campaign.

Before we proceed, it may be useful to present the definition of sport on which our analysis is based on. Sport can be characterized as those activities in which the following four criteria are satisfied:

- The activity is played out as a competition, which is taken seriously even though it serves no external purpose and, in that sense, can be regarded as unserious.
- The aim is to win and to move upwards within the activity's hierarchical structure.
- The activity is organized and functions in an institutionalized framework, in which results are recorded and are ascribed significance.
- The activity is governed by a written set of rules, which are administered by a judge who ideally is impartial.

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These criteria cover the entire range of sporting activities on the Olympic programme but are still narrow enough to eliminate a number of instances such as hunting, jogging and exercise fitness that, if they were included, would make a consistent analysis impossible¹⁰.

Sport can be organized in multiple ways: as single-sport or multi-sport tournaments, heats, rounds, 1-day races, stage races and so on. In any event, the contest is about determining a winner. A fundamental attraction of sport is the dichotomy between losing and winning. Most sport spectators support a particular athlete or a team. It is a joy when one's favored athlete or team wins, as it is dispiriting when they lose. So long as athletes do their utmost to win, the excitement about the outcome of a game or a race will always attract spectators. There is, however, an important dimension that adds significance to sport beyond the here and now which is the comparison of results over time.

There is thus a marked difference between winning in an entirely new sport with no history or tradition and to win one of the classic disciplines at the Olympic Games, the Football World Cup or the Tour de France. The person or team who wins the first competition in a sport that becomes successful and builds a tradition will see their achievement grow in significance as the sport's history develops, unlike athletes who win the first competition in a marginal sport that does not attract any real attention. The growing list of winners and comparisons among them stimulate interest and add importance and value to the sport. If victories are not recorded and ascribed significance, it is not sport by our definition but a pastime. An analysis of the situation in cycling shows that anti-doping poses a threat to sport if wins can be erased or passed on to a defeated athlete or team years after the event has taken place and the name of the winner has been chiseled in the winners' cup.

People with an interest in the history of the Tour de France may not be able to mention the number of stages (12) and the distance covered (2900 km) at the first edition of the race, but there is a good chance they will know the name of the winner, Maurice Garin.

¹⁰ CAS, 2008. *CAS 2007/A/1394 Floyd Landis v/USADA*.

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They will probably also know that Jacques Anquetil was the first rider to win the Tour five times and that the only three riders who have equaled this achievement are Eddy Merckx, Bernard Hinault and Miguel Indurain before these giants were toppled by Lance Armstrong who managed to win the Tour seven consecutive times from 1999 to 2005. If Armstrong had won his Tours by the same means as those of an earlier era his accomplishments and status as the all-time king of the Tour would have been undisputed. However, Armstrong raced in a period when the use of doping changed from being a silently accepted circumstance in the trade of professional cycling to a condemned practice and subject to a puritan crusade for 'clean athletes' right to participate in 'clean sport'.

INTELLECTUAL PROPERTY AND SPORTS MERCHANDISING

Sports being part of everyone's life has been playing an influential part in every aspect of our society. Sports earlier was limited only to the leisure activity or to the physical activities carried on by the individuals to pass their time and keep themselves fit. But in today's time sports is not limited only for entertainment and health purposes but has been extended for commercial activities, thereby being considered as a big source of earning income by grabbing business opportunities in the area of sports. Various sports teams are organized and, on their formation, some special recognition is required. Thus, they are recognized or differentiated from other teams by giving specific names to them. Further for giving identification different and catchy taglines along with logos are created. Apart from entertainment purpose on the other end of being a big business opportunity many sportsmen such as cricketers enter into advertisements and their associations enter into sponsoring, branding, merchandising etc. On commercialization of such elements, their protection is must.

PATENTS:

Granting of legal documents by the government for the purpose of giving an inventor the right to make use and sell an invention for a specified period of time is known as patent. For making any kind of improvements in previous inventions patent can be

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granted¹. Meeting of three necessary tests by an invention is must to qualify a patent which include-

- Invention shall be new and should not exist previously
- It should be improvement to the existing technology
- Invention should be of some use and shall not be used for any immoral and illegal purposes.

Inventions which are new, useful and innovative are protected by the way of patents. Along with products, the processes used for achieving a result are also granted patents. In today's era a lot investors have begun to obtain patent protection for the various sports method inventions. Such sports method inventions are in trend in recent times and include strength training, aerobics, flexibility methods etc.². Licensing their methods provides ample of advantages to such training conductors, as they can continue to conduct such training sessions at their own level by providing specialization and earning a large amount of money. Hence, they are protected from any kind of infringements by the third parties³. Registration of patents is not an easy or simple process and thus, requirement of a legally and technically sound patent agent is must¹¹.

CONCLUSION

Notwithstanding the present challenges, it is pertinent to note, and perhaps even believe that eSports presents a myriad of positives. The digital world has the capability to transcend borders which traditional stadiums have not been thoroughly capable of, and in turn reach a larger viewer-base. In fact, experts believe that eSports can facilitate activism, fundraising, and that the nature of the games could aid rehabilitation centers more effectively than traditional sports. Some non-profits have already begun to utilize such sports for aiding patients' recovery in hospitals. eSports federations have been implored not merely to reach young people, but do so in a meaningful way by imbibing and

¹¹ https://en.wikipedia.org/wiki/Trademark_distinctive_ness

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conveying the values of traditional sport. After all, traditional sports have been instrumental in aiding social change. However, as this paper has discussed, not all values of traditional sport regarding gender are particularly in line with the Olympic Movement. Even though the Olympic Movement is attempting to rectify some of these issues, it has much food for thought as far as gender-segregation is concerned. Hence, eSports presents a unique opportunity to remove the rose-tinted glasses sports enthusiasts have donned for decades, and question if our sporting values are truly gender-inclusive.

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